No. 86-1792

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

JOHN F. ("JACK") WALSH, *et al.*,
Petitioners,

v.

FORD MOTOR COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

The D.C. Circuit panel in this case (Judges Edwards, R.B. Ginsburg and Starr) unanimously found that "the District Court's class certification rulings were made under an erroneous legal standard and must therefore be reversed." *Walsh v. Ford Motor Co.*, 807 F.2d 1000, 1006 (D.C. Cir. 1986); Pet. App. 14a. Petitioners seek review of the court of appeals' reversal of just one of several such class certification rulings, each of which independently required the vacation and remand of the district court's decision. In the challenged ruling, the panel held that neither the language nor the legislative history of the Magnuson-Moss Warranty Act evidenced

a congressional intent to overrule the individual notice requirements of Fed. R. Civ. P. 23(c)(2). Respondent Ford Motor Company * respectfully submits that the decision is correct and that the petition should be denied.

There are no special or important reasons for granting a writ of certiorari in this case. The ruling of the D.C. Circuit is not in conflict with decisions of any other federal court of appeals, of any state court of last resort, or of this Court. As claimed conflicting authority, petitioners cite only a student law review note and passing comments in two cases that petitioners themselves characterize as dicta. *See* Pet. 17. As to the recurring significance of the matter raised by the petition, petitioners maintain that the issue on which they seek review "has only been litigated in the dozen years' history of Magnuson-Moss *in this one case.*" Pet. 20 (emphasis in original). In fact, one other decision, not mentioned by petitioners, addressed the issue and squarely held that in Magnuson-Moss class actions, as in other class actions, "individual notice to class members whose names and addresses may be ascertained through reasonable effort is required." *Skelton v. General Motors Corp.*, 1985-2 Trade Cas. (CCH), ¶ 66,683, at 63,218 (N.D. Ill. 1985).

The D.C. Circuit's construction of the Magnuson-Moss Act is plainly correct and consistent with decisions of

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* In accordance with Rule 28.1 of the Rules of the Supreme Court, the following is a list of the parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of the Ford Motor Company: Ford Motor Company of Canada, Ltd., Ford Motor Credit Company, Ford International Capital Corporation, Ford International Finance Corporation, Renaissance Center Partnership, Ford Brasil, S.A., Oy Ford Ab, Ford-Werke AG, Ford Motor Company Aktiebolag, Ford Motor Company A/S, Ford Nederland B.V., Ford Motor Company (Belgium) N.V., First Nationwide Financial Corporation, Eveleth Taconite Company, Ford Lio Ho Motor Company, LTD., and Fairlane Woods Associates (A Partnership).

this Court. As the court of appeals recognized, "the Federal Rules of Civil Procedure are to be applied in all civil actions absent a *direct expression* of congressional intent to the contrary." *Walsh*, 807 F.2d at 1007; Pet. App. 15a-16a (emphasis in original) (citing *Califano v. Yamasaki*, 442 U.S. 682, 700 (1979)); *see also Marek v. Chesny*, 473 U.S. 1, 11-12 (1985). No provision in the Magnuson-Moss Act indicates that the usual notice requirements of Rule 23 are not to apply in class actions brought under the Act. The court of appeals rejected petitioners' argument to the contrary as "specious" and "based on a tortured and . . . untenable reading of the Act." 807 F.2d at 1004 n.16, 1009; Pet. App. 10a, 20a.

The court also rejected petitioners' contention that "pieces of legislative history indicating some congressional discontent with the individual notice requirement" (807 F.2d at 1011; Pet. App. 24a) could themselves amend the application of Rule 23(c)(2). Petitioners' entire argument revolves around one passage in a House Committee Report concerning the possible financial burden of notifying class members under Rule 23. They contend that this statement was intended to overrule *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), in which this Court held that individual notice to all reasonably identifiable class members is required under Rule 23(c)(2) regardless of the financial resources of the class representatives. As the court of appeals recognized, however, "neither the statutory language agreed upon in conference nor the Conference Committee Report made any reference to Rule 23(c)(2) or *Eisen*." 807 F.2d at 1010; Pet. App. 22a. The passage in the House Committee Report was "never considered or adopted by the full Congress," *id.*, and it plainly does not constitute a "direct expression" of congressional intent to alter the application of Rule 23. In stark contrast, just two days before Magnuson-Moss was passed, Congress enacted the Deep-

water Port Act of 1974, which contained a provision explicitly limiting the application of Rule 23(c)(2) in the circumstances contemplated by that statute. *See* 807 F.2d at 1008, 1011; Pet. App. 17a, 24a. Thus, "[w]hen Congress has meant to limit *Eisen* it has known precisely how to do so . . . ." 807 F.2d at 1008; Pet. App. 17a.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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